IN THE UNITED STATES DISTRICT COURT FILED

GREAT FALLS

FOR THE DISTRICT OF MONTANA 2011 OCT 24 AM 9 37

GREAT FALLS DIVISION
PATRICK E. DUFFY, CLERK

BY _____
DEPUTY CLERK

UNITED STATES OF AMERICA,	)	Cause No. CR 08-39-GF-SEH
	)	CV 11-73-GF-SEH
Plaintiff/Respondent,	)	
	)	
vs.	)	ORDER DISMISSING MOTION AND
	)	DENYING CERTIFICATE OF
BRICE HUTTINGER,	)	APPEALABILITY
	)	
Defendant/Movant.	)	
	)	

On October 20, 2011, Defendant/Movant Brice Huttinger filed a motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255, and a motion for the appointment of counsel. Huttinger is a federal prisoner proceeding pro se.

Huttinger previously filed a § 2255 motion on February 22, 2010. The motion and a certificate of appealability were denied on May 25, 2010 (doc. 57). On December 20, 2010, the Ninth Circuit Court of Appeals denied a certificate of appealability. *United States v. Huttinger*, No. 10-35517 (9th Cir. Dec. 20, 2010) (doc. 60).

Because Huttinger has already filed a § 2255 motion, this Court lacks jurisdiction to consider a second one without prior authorization from the Court of

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Appeals. 28 U.S.C. §§ 2255(h), 2244(b); *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam).
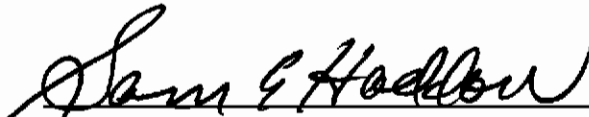
A certificate of appealability is not warranted. The procedural law is clear, *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), and Huttinger makes no "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2).

Finally, because Huttinger's motion is frivolous, transfer to the Court of Appeals is not in the interest of justice. 28 U.S.C. § 1631.

ORDERED:

1. Huttinger's second motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 (doc. 63) is DISMISSED for lack of jurisdiction.

2. The motion for appointment of counsel (doc. 64) is MOOT.

3. A certificate of appealability is DENIED.

4. The Clerk of Court is directed to enter, by separate document, a judgment of dismissal in Cause No. CV 11-73-GF-SEH.

DATED this 24th day of October, 2011.

Sam E. Haddon
United States District Judge